

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARONDA D. BROOKINS,)	
)	
Plaintiff,)	
)	C.A. No. 08-cv-11 GMS
v.)	
)	JURY TRIAL DEMANDED
RED CLAY CONSOLIDATED SCHOOL)	
DISTRICT,)	
)	
Defendant.)	

**DEFENDANT RED CLAY CONSOLIDATED SCHOOL DISTRICT’S REPLY IN
SUPPORT OF ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), 42 U.S.C.A. § 2000e-2(a), and 42 U.S.C.A. § 2000e-5(e)(1), defendant Red Clay Consolidated School District, hereinafter “Red Clay”, respectfully moves for an order dismissing plaintiff’s claims against it for failure to comply with the statute of limitations and for failure to state a claim upon which relief may be granted. In support of its motion, defendant Red Clay offers the following:

Procedural Background

1. On February 13, 2008, plaintiff filed a Response, D.I. 18, to Red Clay’s Motion to Dismiss, D.I. 17.

Standard of Review

2. A complaint should be dismissed if, after “drawing all reasonable inferences in plaintiff’s favor, no relief could be granted under any set of facts consistent with the allegations

of the complaint.” *Tillman v. Pepsi Bottling Co.*, C.A. 04-CV-1314, Robinson, J. (August 30, 2007, D.Del.), 2005 WL 2127820 at * 5.

3. In deciding a motion to dismiss, this Court considers only facts pled in the complaint and not any additional facts alleged in the answering brief to a motion to dismiss. *Tillman*, 2005 WL 2127820 at * 1, fn2.

Plaintiff's Claims Are Time Barred For Failure To Comply With The Statutory 300 Day Charge Filing Deadline

4. Plaintiff did not file her Charge of Discrimination within the statutory 300 day filing deadline. 42 U.S.C.A. § 2000e-5(e)(1). Plaintiff's Response to Red Clay's Motion to Dismiss fails to provide any substantive proof to rebut the official filing record of her Charge of Discrimination, D.I. 17, Ex. A (Plaintiff's Charge of Discrimination, dated 1/11/07). Furthermore, this Court does not permit additional facts to be alleged in an answering brief. As a matter of law, plaintiff's claims must be dismissed as time barred.

Plaintiff's Complaint Fails To State A Title VII Claim

5. Plaintiff's response fails to demonstrate that she established the necessary elements of a Title VII claim. In neither the Complaint, nor her Response to the Motion to Dismiss, has plaintiff alleged: 1) that she is a member of a protected class (race, color, religion, sex or national origin); 2) that she was qualified for the job from which she was discharged; and 3) that others, not in the protected class, were treated more favorably. 42 U.S.C.A. § 2000e-2(a); *Hugh v. Butler*, 418 F.3d at 265, 267 (3d. Cir. 2005). As a matter of law, plaintiff's claims must be dismissed for failure to state a Title VII claim.

In conclusion, for the above stated reasons, defendant Red Clay requests that this Court dismiss the claims against it for failure to comply with the statute of limitations and for failure to state a claim upon which relief may be granted.

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/s/ Dana Spring Monzo

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Dated: February 25, 2008

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARONDA D. BROOKINS,)	
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Plaintiff,)	
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v.)	
)	JURY TRIAL DEMANDED
RED CLAY CONSOLIDATED SCHOOL)	
DISTRICT,)	
)	
Defendant.)	

ORDER

AND NOW, this ____ day of _____, 2008, upon consideration of *Defendant Red Clay Consolidated School District's Motion to Dismiss* and plaintiff's response thereto,

IT HEREBY IS ORDERED AND DECREED that the motion is **GRANTED** and the claims against *Defendant Red Clay Consolidated School District* are dismissed with prejudice.

BY THE COURT:

J. Sleet

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CERTIFICATE OF SERVICE

I, Dana Spring Monzo, Esquire do hereby certify that on this 25th day of February, 2008, two copies of the foregoing **DEFENDANT RED CLAY CONSOLIDATED SCHOOL DISTRICT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM** were served upon the following via CM/ECF and regular U.S. First Class Mail, postage prepaid:

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